

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

LODSYS, LLC,

Plaintiff,

v.

ATARI INTERACTIVE, INC.;
COMBAY, INC.;
ELECTRONIC ARTS, INC.;
ICONFACTORY, INC.;
ILLUSION LABS AB;
MICHAEL G. KARR D/B/A
SHOVELMATE;
QUICKOFFICE, INC.;
ROVIO MOBILE LTD.
RICHARD SHINDERMAN;
SQUARE ENIX LTD.;
TAKE-TWO INTERACTIVE SOFTWARE,
INC.,

Defendants.

CIVIL ACTION NO. 2:11-cv-272-JRG

CONSOLIDATED WITH:

CIVIL ACTION NO. 2:11-cv-00090-JRG

JURY TRIAL DEMANDED

**ANSWER OF DEFENDANT ILLUSION LABS AB TO PLAINTIFF'S
AMENDED COMPLAINT FOR PATENT INFRINGEMENT**

Defendant Illusion Labs AB (“Illusion Labs”), reserving its right to object to this Court’s personal jurisdiction over it, responds to the Amended Complaint For Patent Infringement filed by Plaintiff Lodsys, LLC (“Lodsys” or “Plaintiff”), with the following:

GENERAL DENIAL

Unless specifically admitted below, Illusion Labs denies each and every allegation in the Amended Complaint.

RESPONSE TO SPECIFIC ALLEGATIONS

Illusion Labs answers the numbered paragraphs of the Complaint with the following correspondingly-numbered responses:

THE PARTIES

1. Illusion Labs lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 1, and therefore denies them.

2. Illusion Labs lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 2, and therefore denies them.

3. Illusion Labs lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 3, and therefore denies them.

4. Illusion Labs lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 4, and therefore denies them.

5. Illusion Labs lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 5, and therefore denies them.

6. Illusion Labs admits the allegations of paragraph 6.

7. Illusion Labs lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 7, and therefore denies them.

8. Illusion Labs lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 8, and therefore denies them.

9. Illusion Labs lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 9, and therefore denies them.

10. Illusion Labs lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 10, and therefore denies them.

11. Illusion Labs lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 11, and therefore denies them.

12. Illusion Labs lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 12, and therefore denies them.

JURISDICTION AND VENUE

13. Illusion Labs admits that this Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a), because this action arises under the patent laws of the United States, 35 U.S.C. §§ 1 *et seq.*, but denies that those claims have any merit. Illusion Labs admits that, pursuant to 28 U.S.C. §§1391(b)-(c) and 1400(b), venue may be found in this federal district, but otherwise denies the allegations of paragraph 13, and specifically denies that it has committed any act of infringement in this judicial district.

14. Illusion Labs denies that this Court has specific and/or personal jurisdiction over it, and otherwise denies the allegations of paragraph 14, and specifically denies that it has committed any act of infringement in this judicial district.

INFRINGEMENT OF U.S. PATENT NO. 7,620,565 B2

15. Illusion Labs admits that the Complaint purports to attach a copy of U.S. Patent No. 7,620,565 (the “’565 patent”) as Exhibit A. Illusion Labs further admits that such copy of the ’565 patent, on its face, states that it issued on November 17, 2009 and it is entitled “Customer-Based Product Design Module.” Illusion Labs is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 15 of the Amended Complaint and, on that basis, denies each and every allegation in that paragraph.

16. Illusion Labs lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 16, and therefore denies them.

17. Illusion Labs lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 17, and therefore denies them.

18. Illusion Labs lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 18, and therefore denies them.

19. Illusion Labs lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 19, and therefore denies them.

20. Illusion Labs denies each and every allegation of paragraph 20. Illusion Labs denies any express or implied allegation within paragraph 20 that it has infringed, or is now infringing, directly, or indirectly, any patent, and denies that Plaintiff is entitled to damages, an injunction, and/or any other relief.

21. Illusion Labs lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 21, and therefore denies them.

22. Illusion Labs lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 22, and therefore denies them.

23. Illusion Labs lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 23, and therefore denies them.

24. Illusion Labs lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 24, and therefore denies them.

25. Illusion Labs lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 25, and therefore denies them.

26. Illusion Labs lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 26, and therefore denies them.

27. Illusion Labs denies each and every allegation of paragraph 27 of the Amended Complaint as they relate to Illusion Labs. Illusion Labs denies any express or implied allegation within paragraph 27 that is has infringed, or is now infringing, directly or indirectly, any patent, and denies that Plaintiff is entitled to damages, an injunction, and/or other relief. Illusion Labs is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in this paragraph as they relate to the other defendants and, on that basis, denies each and every remaining allegation of paragraph 27 of the Amended Complaint.

INFRINGEMENT OF U.S. PATENT NO. 7,222,078 B2

28. Illusion Labs admits that the Amended Complaint purports to attach a copy of U.S. Patent No. 7,222,078 (the “’078 patent”) as Exhibit B. Illusion Labs further admits that such copy of the ‘078 patent, on its face, states that it issued May 22, 2077 and is entitled “Methods and Systems for Gathering Information from Units of a Commodity Across a Network.” Illusion Labs is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 28 of the Amended Complaint and, on that basis, denied each and every allegation in that paragraph.

29. Illusion Labs lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 29, and therefore denies them.

30. Illusion Labs lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 30, and therefore denies them.

31. Illusion Labs lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 31, and therefore denies them.

32. Illusion Labs lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 32, and therefore denies them.

33. Illusion Labs denies each and every allegation of paragraph 33. Illusion Labs denies any express or implied allegation within paragraph 33 that it has infringed, or is now infringing, directly or indirectly, any patent, and denies that Plaintiff is entitled to damages, an injunction, and/or any other relief.

34. Illusion Labs lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 34, and therefore denies them.

35. Illusion Labs lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 35, and therefore denies them.

36. Illusion Labs lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 36, and therefore denies them.

37. Illusion Labs lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 37, and therefore denies them.

38. Illusion Labs lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 38, and therefore denies them.

39. Illusion Labs lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 39, and therefore denies them.

40. Illusion Labs denies each and every allegation of paragraph 40 of the Amended Complaint as they relate to Illusion Labs. Illusion Labs denies any express or implied allegation within paragraph 40 that it has infringed, or is now infringing, directly or indirectly, any patent and denies that Plaintiff is entitled to any damages, an injunction, and/or any other relief. Illusion Labs is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth to the other defendants and, on that basis, denies each and every remaining allegation of paragraph 40 of the Amended Complaint.

PRAYER FOR RELIEF

In response to Plaintiff's Prayer for Relief, Illusion Labs denies that Plaintiff is entitled to any relief sought in its amended complaint.

AFFIRMATIVE DEFENSES

Illusion Labs asserts the following affirmative defenses to the Complaint. Assertion of such a defense is not a concession that Illusion Labs has the burden of proving the matter asserted.

1. Illusion Labs is a foreign entity and is not subject to this Court's personal jurisdiction.

2. Apple, Inc. ("Apple") holds a license to the '565 patent and the '078 patent. Such license permits Apple to offer and otherwise make available to Illusion Labs and others' products and services that embody the inventions contained in the '565 and '078 patents. Plaintiff's infringement claims against Illusion Labs are based on Illusion Labs's use of products and services that Apple is authorized to provide under such license and which Plaintiff claims embody the '565 and '078 patents. Under the patent law doctrines of exhaustion and first sale, Illusion Labs can use the products and services Apple provides to it free of claims of infringing the '078 and '565 patents. Therefore, Plaintiff's claims against Illusion Labs are barred by the license to Apple and the doctrines of patent exhaustion and first sale.

3. Illusion Labs has not infringed, and does not infringe, directly or indirectly, either literally or by application of the doctrine of equivalents, any valid claim of the '565 patent.

4. Illusion Labs has not infringed, and does not infringe, directly or indirectly, either literally or by application of the doctrine of equivalents, any valid claim of the '078 patent.

5. One or more claims of the '565 patent is invalid and/or unenforceable for failure to meet one or more of the conditions of patentability and/or patent eligibility specified in Title 35 of the United States Code, including, without limitation, sections 101, 102, 103, and 112.

6. One or more claims of the '078 patent is invalid and/or unenforceable for failure to meet one or more of the conditions of patentability and/or patent eligibility specified in Title 35 of the United States Code, including, without limitation, sections 101, 102, 103, and 112.

7. Plaintiff's claims should be dismissed under Rule 12(b)(6) of the Federal Rules of Civil Procedure for failure to state a claim upon which relief can be granted.

8. Plaintiff's available remedies are limited or barred by 35 U.S.C. §§ 286, 287, 288 and/or 28 U.S.C. § 1498.

9. Plaintiff's claims are barred, in whole or in part, by the equitable doctrines of implied license, laches, estoppel, and/or waiver.

10. Plaintiff is estopped from construing the claims of the '565 in such a manner that covers Illusion Labs's activities by reason of, among other things, statements made in the '565 patent, amendments, and/or statements made in and to the United States Patent and Trademark Office during the prosecution of the application that issued as the '565 patent, prior statements made in this or any other Court, prior rulings of this or any other Court, and/or Plaintiff's prior conduct.

11. Plaintiff is estopped from construing the claims of the '078 patent in such a manner that covers Illusion Labs's activities by reason of, among other things, statements made in the '078 patent, amendments, and/or statements made in and to the United States Patent and Trademark Office during the prosecution of the application that issued as the '078 patent, prior statements made in this or any other Court, prior rulings of this or any other Court, and/or Plaintiff's prior conduct.

12. One or more of Plaintiff's claims are barred, in whole or in part, by the doctrine of unclean hands.

JURY DEMAND

In response to Plaintiff's Jury Demand, Illusion Labs also demand a trial by jury on all issues so triable.

RESERVATION OF ADDITIONAL CLAIMS AND DEFENSES

In accordance with the Federal Rules of Civil Procedure and other applicable provisions, Illusion Labs reserves the right to assert, by pleading or motion, additional applicable claims and/or defenses at law or in equity, including but not limited to objecting to this Court's personal jurisdiction over it.

PRAYER FOR RELIEF

WHEREFORE, Illusion Labs prays for relief as follows:

- A. That the Court enter judgment in favor of Illusion Labs, and against Lodsys;
- B. That the Court find that the patents-in-suit are not infringed by Illusion Labs;
- C. That the Court find that the patents-in-suit are invalid;
- D. That the Court find that the patents-in-suit are unenforceable;
- E. That Lodsys take nothing by its Complaint against Illusion Labs;

F. That the Court find this case exceptional under 35 U.S.C. § 285, and award Illusion Labs its costs and fees in this action, including reasonable attorneys' fees and pre-judgment interest thereon; and

G. That the Court grant Illusion Labs such other and further relief as it deems just and proper.

Dated: August 20, 2012

Respectfully submitted,

By: /s/ Michael D. Findlay

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CERTIFICATE OF SERVICE

The undersigned certifies that on this 20th day of August, 2012, all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document through the Court's CM/ECF system under Local Rule CV-5(a)(3).

/s/ Michael D. Findlay

Michael D. Findlay